

EXHIBIT 86

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 Lead Case No. 3:21-cv-03825-VC

6 -----x

7 IN RE: Da Vinci SURGICAL ROBOT
ANTITRUST LITIGATION

8 -----x

9 AND RELATED CASE.

-----x

10 March 15, 2023

11 9:07 a.m.

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14 Remote Virtual Zoom Deposition of
15 KIMBERLY A. TRAUTMAN take Plaintiff, pursuant
16 to Notice, with the Witness located at the
17 offices of Covington & Burling 850 Tenth Street
18 NW, Washington, D.C., before William Visconti,
19 a Shorthand Reporter and Notary Public within
20 and for the State of New York.

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1 KIMBERLY ANN TRAUTMAN

2 until such time as there was a better official
3 agency position.

4 Q. When you were at FDA and you
5 told a company to stop engaging activity, did
6 you expect them to stop?

7 A. Expect them to, would we have like
8 them to, does that not mean that we had to go
9 to warning letters and corporate warning
10 letters and seizures and injunctions when we
11 didn't. Did I learn from many good lawyers
12 such as yourself and the people here that it's
13 not about necessarily what FDA wants, it's what
14 they can prove.

15 So what FDA employees would
16 want is irrelevant in many cases as compared to
17 what could be proven and if need be taken to a
18 court of law and supported.

19 Q. When you were at FDA and requested
20 a company stop engaging in an activity, did you
21 expect the company to stop?

22 A. I expected to hear a response from
23 them. Often times I would expect to have legal
24 counsel join them to provide rationale and
25 many, many, many times the activities would

1 KIMBERLY ANN TRAUTMAN

2 absolutely not be stopped while those
3 engagements and discussions were happening.

4 Q. So you can't answer my question,
5 is that the answer?

6 A. No, sir, I think I did answer your
7 question.

8 Q. Okay. So if you asked a company
9 to stop engaging an activity and learned they
10 continued to engage in that activity while you
11 were at FDA, would you just ignore that?

12 A. So first of all, again, what I
13 would personally ask them is irrelevant until
14 there is an official action or official
15 notification from the agency. So my single
16 voice, even as an international expert doesn't
17 necessarily hold water when I went to court.
18 The judge will say who cares, Miss Trautman,
19 what you told them, where is the evidence.
20 They have evidence that says to the contrary,
21 why should they have stopped, they have their
22 rationale and you have yours, prove it. That
23 is what we have to do.

24 Q. I'm not talking about court cases.
25 I'm not talking about anything further than

1 KIMBERLY ANN TRAUTMAN

2 and this discussion between they definitions is
3 not intended to give any interpretation of the
4 agency.

5 It is very, very telling along
6 with FDA website statements that the agency has
7 not clarified what they feel should happen in
8 this space. They fully understand that this
9 third-party system is very critical to the
10 healthcare system. There is economic reasons,
11 there is political reasons, and they have asked
12 for decades while I was at FDA and since, you
13 know, provide evidence of public health harm to
14 these practices to help inform.

15 And as recently as the last couple
16 of years they very overtly said, we do not find
17 compelling evidence that says that there is any
18 public health harm in the activities that are
19 going on, therefore have made the decision that
20 right now the economic burden of make those
21 type of blanket policy statements that you're
22 talking about, they say that they don't have
23 the evidence to make that yet. And they have
24 that for 30 years.

25 Q. I promise you when I want to ask